IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 13035 of 1993

Between:

1 M. Narasimha Reddy (Died, by LRs 2 to 5)
2 M Lakshmi, w/o. Late Narasimha Reddy,
r/o. 2-1-39, Rajnagar Colony, Uppal, Ranga Reddy Dist.
3 M. Pushpa, W/o. Late Narasimha Reddy,
r/o. 2-1-39, Rajnagar Colony, Uppal, Ranga Reddy Dist.
4 M Venkata Laxma Reddy, S/o. Late Narasimha Reddy,
r/o. 2-1-39, Rajnagar Colony, Uppal, Ranga Reddy Dist.
5 M. Venkatram Reddy, S/o. Late Narasimha Reddy,
r/o. 2-1-39, Rajnagar Colony, Uppal, Ranga Reddy Dist.

Petitioners 2 to 5 are brought on record as L.Rs. of the deceased first petitioner as per court order in WPMP 4784/02, dt. 05.03.2002. … Petitioners

AND

1 State of A.P., rep. by Secretary
Municipal Admn., Hyderabad.
2 The Commissioner for Land Reforms, Urban Land Ceiling, Hyderabad.
3 The Special Officer & Competent Authotity, Hyderabad.
4 The Special Deputy Collector-Land Acquisition (General), Hyderabad.
R4 is impleaded as per Court order dt 17.10.94 in WPMP 20955/94.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of 'Writ of Certiorari' calling for the records relating to proceedings no.I/7422/76 dated 8.8.86, as confirmed by the appellate authority in Proceedings No.UCI/3095/86 dt 28.5.91 and the final statement issued in Proceedings No.H1/7422/76 dt. 19.7.93 and proceedings in C Hyd/194/93 dated 25.5.94 and the same may be declared as illegal and void and the same may be set aside and by declaring that the treating of the lands in survey No. 25 of Thattikhana Village and Survey No. 649 of Uppal Kalasa Village as vacant land is illegal and void and also declare the premises No. 12-10-130 situated at Seethapalmandi which is acquired by the Government is liable to be deleted from the petitioner's holding.(Prayer is amended as per Court order dt.17-10-94 inWP20956/94)

Counsel for the Petitioners :MR HARANDAS PERSHAD

Counsel for the Respondent No.1:G.P. for Municipal Admn.

Counsel for the Respondents 2 to 4 : GP FOR REVENUE

The Court made the following :

THE HON'BLE SRI JUSTICE B.PRAKASH RAO

WRIT PETITION No.13035 of 1993

O R D E R :

Heard Sri Harender Pershad, learned counsel appearing for the petitioner and the learned Government Pleader for Revenue and Municipal Administration for respondents.

The petitioner, who is declarant under the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 (for short, 'the Act') filed this Writ Petition, *inter alia,* seeking to assail the impugned proceedings dated 08.08.1986 passed by the third respondent and as confirmed in appeal by the second respondent as per the proceedings dated 28.05.1991 and also final statement dated 19.07.1993 as bad, illegal and void. Consequently, it was also sought for declaring the action of treating the land in survey no.25 of Thattikhana village and survey no.649 of Uppal Kalasa village as vacant land as illegal and also to declare the premises bearing no.12-10-130 situated in Seethapalmandi which was acquired by the government as liable to be deleted from the petitioner's holding.

The facts in brief, are that in pursuance of the declaration filed by the petitioner, initially the third respondent issued draft statement u/Sec.

8(1) of the Act on 26.10.1984 to which the petitioner had filed objections stating that in the premises bearing no.12-1-130 of Seethapalmandi village, a construction was existing much prior to the enforcement of the said Act and there are dwelling units wherein a Govt. High School is being run. Further, the land in survey no.649 of Uppal is outside the agglomeration and there is already a change of user to construct a cinema theatre as per the G.O. Rt. No.1560, General Administration Department, dated 02.06.1981 and also that an extent of Ac.25.00 of agricultural land is situated outside the peripheral area and there has been a wrong inclusion. However, in spite of these and other objections, a final statement was issued u/sec. 8(4) and 9 of the said Act on 8.8.1986. Against such orders, the petitioner has filed a regular appeal before the second respondent. However, the petitioner had received the proceedings dated 19.7.1993 from the third respondent purported to be the final statement, wherein it was mentioned that the appeal filed by the petitioner before the second respondent was disposed of on 28.05.1991 rejecting the said objections. After making enquiry, the petitioner obtained a copy of the order and filed another appeal before the second respondent as against the orders dated 19.7.1993 and the same was pending. However, it is the case of the petitioner that in view of the orders already passed on 28.5.1991, the second respondent may not go into all such questions. Hence, the Writ Petition.

In support of his case, the petitioner raised several grounds, which include that the land in survey no.25 is outside the peripheral area in the master plan and used for agricultural purposes and the same can not be treated as vacant land. Further, as there being no master plan on the notified date and the relevant master plan having been notified in G.O. No.391, dated 23.6.1980 as published in Gazette on 10.12.1980, which included the said land in conservative zone and therefore, the same ought not to have been included in the holding. In regard to survey no.649, it is an agricultural land and not included in

the municipal area on the relevant date and the master plan was subsequently extended in G.O. No.391 showing as recreational zone wherein as per the orders in G.O. No.1560 dated 2.6.1981, the petitioner was allowed to construct cinema theatre and therefore, the same could not have been included. Further, as regards the premises bearing no.12-10-130, situated in Seethapalmandi mandal, which is in occupation of the Government and there exists several buildings, which ought to have been taken into consideration. That apart, the said land having acquired under the provisions of the Land Acquisition Act under G.O. 560 Education, dated 13.12.1983 and followed up by another G.O. No.191, dated 25.8.1993, it could not have been included in the holding.

With the aforesaid and several other contentions as sought to be urged on behalf of the petitioner on merits, it is contended that the petitioner's case has not been properly considered and he had no opportunity of hearing.

Contesting the petitioner's claim, in the counter affidavit filed by the respondents 1 to 3 herein, there is denial of every objection raised by the petitioner and further stating that all these objections have not been raised at appropriate time and the shares have been rightly worked out and therefore, every finding given therein is purely based on arguments advanced and material available on record. Further, it is also observed that in view of the over-riding provision u/Sec.42 of the Act, 1976, provisions of the Land Acquisition Act can not have any application. Hence, the Writ Petition is liable to be dismissed.

The fourth respondent who has been subsequently added as party as per the court order dated 17.10.1994, filed separate counter affidavit stating that he is not a necessary party and further, in respect of the acquisition proceedings, award has already been passed vide

proceedings dated 31.08.1994 under Section 30 of the Land Acquisition Act and referred to Civil Court and the awarded amount of compensation was also deposited vide cheque dated 7.9.1994 with the Chief Judge, City Civil Court, Hyderabad as per the letter dated 30.9.1994.

Original petitioner died and subsequently, petitioners 2 to 5 were added as legal representatives of the deceased first petitioner as per the court order dated 5.3.2002.

Considering the submissions made and on perusal of material, the question arises for consideration is as to whether the petitioner is entitled to the reliefs as sought for on the objections raised by him while determining his holding ?

Before going into merits of each and every objection raised on behalf of the petitioner, there is no dispute to the fact that in pursuance of the declaration filed by him, a draft statement was issued under Section 8(1) of the said Act on 26.10.1984 and the petitioner had already filed objections thereto. Later on, a final statement was issued on 8.8.1986 by the third respondent against which, the petitioner filed an appeal before the second respondent. The case of the petitioner is that he did not receive any intimation in regard to the disposal of the said appeal and surprisingly he received proceedings dated 19.7.1993 from the third respondent mentioning the disposal of the said appeal by the second respondent on 28.5.1991 and therefore, consequently, the said proceedings have been issued. Though the petitioner has taken specific plea in the affidavit to the effect that the order dated 28.5.1991 was not communicated to him nor there is any intimation as such, no separate counter affidavit has been filed by the second respondent to deny the said fact nor there is any specific denial in this regard in the counter affidavit filed by the third respondent on 31.5.1994. The case of the petitioner is only subsequent to receipt of the order dated 19.7.1993. He obtained

copy of the order and filed the present Writ Petition. That apart, the petitioner also states that he filed appeal against the said proceedings dated 19.7.1993 before the second respondent and the same is pending. Having regard to the fact that there being no serious denial on the part of the respondents herein in regard to proper opportunity being provided to the petitioner at the time of disposal of the said appeal by the second respondent and subsequent communication thereof, and further in view of the substantial questions as sought to be raised on behalf of the petitioner in regard to inclusion of certain extents of land, it is felt more desirable that a proper opportunity should be provided for reconsideration of the entire proceedings afresh, more so in view of the fact that the petitioner's later appeal against the proceedings dated 19.7.1993 is also pending before the second respondent. Even on a perusal of the grounds urged on behalf of the petitioner, the same prima facie appear to be substantial and requires to be considered since it will have effect on the substantive rights of the parties and the question involved also equally substantial.

The Writ Petition is, accordingly, allowed and the orders dated 28.5.1991 of the second respondent are set aside and the matter is remitted to the second respondent for disposal of the appeal afresh on merits and in accordance with law along with the other appeal filed by the petitioner as against the orders of third respondent dated 19.7.1993 after giving notice and opportunity to both sides. No costs.

01.02.2005 (B.Prakash Rao, J.)

DRK

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice,
on Tuesday the first day of February Two thousand and five.

…Registrar

Copy to:

1 The Secretary, Municipal Admn., State of A.P., Hyderabad.
2 The Commissioner for Land Reforms, Urban Land Ceiling, Hyderabad.
3 The Special Officer & Competent Authotity, Hyderabad.
4 The Special Deputy Collector-Land Acquisition (General), Hyderabad.

5 Two CCs to the G.P. for Revenue, High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

5 Two CCs to the G.P. for Municipal Admn., High Court of A.P., High Court buildings, Hyderabad (o.u.t.).

6 Two CD copies.

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01.02.2005